money to Kumarappa. After the original Statement of Defence had been delivered the defendant, in March 1950, put in an amended Statement of Defence in which, for the first time, an issue of novation was raised. It was suggested that, because the two promissory notes took into account previous dealings between the defendant and the bank, they constituted a novation and were therefore invalid as against the defendant. I am quite unable to see any point or substance in this suggestion. If Kumarappa was, in fact, acting within the scope of his agency he had the necessary authority to enter into a novated contract on behalf of his principal. As regards the question whether Kumarappa exceeded his authority as agent or acted without authority (allegations which were not made by or on behalf of the defendant in evidence) I am of the opinion that that loan obtained by Kumarappa was ratified; it was ratified by Palanippa, after he had become the defendant's attorney. Palaniappa in fact paid $500 to the bank by way of reduction of the loan and promised to repay the balance. Having considered all the matters raised in this case, including the wealth of correspondence and documents, I am satisfied that the bank acted in good faith and that Kumarappa, in the light of Exhibits 17 and 18, acted within the scope of his agency. I therefore give judgment for the plaintiffs upon the claim, with costs, to include applications, proceedings, letters of request and motions prior to the actual hearing.

Judgment for the plaintiffs.

In re LIM PENG KOI.

[Orig. Crim. Juris. (Rogers, J.) January 19, 1952]

[Singapore — Habeas Corpus No. 1 of 1952]

Habeas Corpus — Banishment Ordinance, s. 4 — Bail.

The applicant was allowed bail by the Magistrate on a charge of gang robbery. When the bail bond was signed it was found that there was against him a Warrant of Arrest and Detention under the Banishment Ordinance; the applicant was then returned to prison. Affidavits were then sworn by responsible persons to the effect that the applicant was a natural born British subject and an Order Nisi was granted on his application for habeas corpus. Between the making of this order and the return date of hearing the warrant of arrest was cancelled. An order absolute was made and a direction given that the applicant be discharged from custody on the bail bond which had been signed.

HABEAS CORPUS.

M. B. Brash for the applicant.

E. P. Shank for the Crown.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Rogers, J. : — This is the return to an *Order Nisi* which issued from this Court on 11th January, 1952 that a Writ of Habeas Corpus should be addressed to the Commissioner of Prisons in charge of the Civil Prison at Outram Road calling upon him to have the body of one Lim Peng Koi brought before this Court immediately after the receipt of such Writ, unless the said Commissioner of Prisons or any other person do show cause to the contrary why such a Writ of Habeas Corpus should not issue and the said Lim Peng Koi be set at liberty.

The applicant was arrested on 25th November 1951 on a charge of gang robbery together with 7 others, and was brought before the magistrate the following day. He was then remanded in custody and sent on December 10th to the Outram Road Remand Prison. On December 31st he applied for and was granted Bail in the sum of $10,000 with 2 sureties. On January 2nd the sureties duly signed the necessary Bail Bond which in turn was signed by the magistrate, and there was, so far as the pending charge was concerned, no reason why he should not have been set at liberty.

Meanwhile, however, on December 8th a Warrant of Arrest and Detention under section 4 of the Banishment Ordinance had been issued by the Colonial Secretary against the said Lim Peng Koi but this warrant was not served on him, nor so far as I can ascertain was any information given to him as to its existence until December 31st. In the result, after the magistrate had approved the Bail Bond of 2nd January 1952 he was then told by the Superintendent of the Prison that the applicant must be returned to the Prison pursuant to the Warrant of Arrest and Detention.

Within a few days of this return to the Prison, affidavits were sworn by responsible persons to the effect that the applicant was born in Singapore in 1912 and that he is in consequence a natural born subject of His Majesty. The application for an *Order Nisi* was supported by these affidavits, and on 17th January 1952 an affidavit was sworn by one of the Assistant Secretaries of the Colonial Secretary to the effect that the Warrant of Arrest and Detention had been cancelled.

As the grounds given to the magistrate for the applicant's continued detention have accordingly ceased to exist, I am of the opinion that the applicant succeeds in this application and I now make the *Order Absolute* and direct that a Writ of Habeas Corpus be served upon the Commissioner of Prisons to produce him

before this Court forthwith. As the custody of the applicant is under the control and direction of this Court by virtue of the Writ I make a further order that he be discharged from custody, unless some other reason be found for his detention. This brings me to the charge of gang robbery pending against him. The magistrate after hearing all parties, thought fit to allow Bail in $10,000, and I should not feel disposed to alter his decision in that regard, even if I had power to do so. That order therefore still stands, and although I am informed that periodically since January 2nd the magistrate has remanded the applicant in custody, it is only logical to suppose that he has done so on the strength of the information which was given him on that date, and that if it had not been for such information, the Bail Bond would have remained in force.

The applicant is therefore entitled to be released on the Bail fixed by the magistrate and with the sureties approved by him, but I order that his passport remain in the custody of this Court pending the final determination of the gang robbery charge in whatever Court that final determination may be. There being no other reason for his detention, he may be immediately discharged. The applicant is to have the costs of this application.

Order accordingly.

KANG BARK TENG & ANOR. v. LEE KWEE LIM & ANOR. *

[Orig. Civ. Juris. (Rogers, J.) January 21, 1952]

[Singapore — Suit No. 307 of 1951]

Negligence — Motor accident — Death of passenger — Joint liability of tortfeasors — Quantum of damages — Civil Law Ordinance, s. 8.

The deceased, a healthy man of 29 years old, was an unlicenced pork seller. He was killed as a result of a collision between a motor car and the lorry in which he was travelling. He had dependants and his earnings were about $300/- per month.

Held, on the facts both the car and lorry drivers were equally liable for damages. Having regard to the fact that the deceased was an unlicensed hawker it was not possible to say what his prospects were and damages were assessed under section 8 of the Civil Law Ordinance and for loss of expectation of life.

Case referred to:—

(1) *Benham v. Gambling* (1941) 1 All E.R. 7.

ACTION FOR DAMAGES.

D. Murphy for the plaintiffs.

L. A. J. Smith for the 1st defendant.

Chong Thutt Pitt for the 2nd defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Rogers, J. : — In this case it has been proved or admitted that the deceased was a healthy man of 29 years of age, that he had a wife who is now 21, one small boy, and a mother and 2 younger sisters, all of whom lived with him and for whose maintenance he had made himself responsible. It is also proved or admitted that he lost his life, through no fault of his own, through a cross roads collision between the lorry upon which he was travelling and a motor car being driven in the opposite direction. The said collision occurred shortly before 6 a.m. on 4th May, 1950.

On the question of liability, I find no difficulty in deciding that there was negligence on the part of both drivers. Each to my mind was failing to keep an adequate lookout, and each was travelling at a speed which in the circumstances of the case was excessive. I therefore hold that the plaintiff is entitled to recover against both.

I now pass to the question of damages which as in all cases of this nature presents a certain amount of complexity. It appears that the deceased, and according to the evidence of Mr. Peng Soon Kuay, others like him were earning their livings as hawkers of pork in Middle Road, and from this business, the deceased was earning a sufficient livelihood to keep his dependants as herein set out. To carry on this business, however, he had no licence and was thereby committing a flagrant breach of section 194(4) of the Municipal Ordinance. It appears that the breach of this section was not only ignored by those responsible for enforcing its observance, but the deceased was also permitted to use the Municipal abattoir for the slaughter of his pigs. These conditions can hardly be described as satisfactory, and I am informed that steps are being taken elsewhere to remedy the position. In the meantime what of the deceased's prospects in this rather precarious enterprise? He was earning about $300 a month at the time of his death, and so long as pork continues to be a popular form of nourishment, his business would have gone on, but the question to be considered is for how long it would have done so.

On the one hand, the section which he was contravening might be repealed, which would have

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* The judgment reported in (1951) M.L.J. 44 was set aside on the ground that although the Letters of Administration had been granted to the plaintiffs but no grant had been extracted until after the trial. The plaintiffs having extracted the grant instituted new proceedings. — *Ed. M.L.J.*